



# ***Adopting the Generator Improvements Rule in California***

**Omar Ghaleb**  
**Policy and Program Support Branch**  
**Hazardous Waste Management Program**  
**Department of Toxic Substances Control**  
**February 28, 2019**



## ***Disclaimer***

*The information in this presentation is for reference only.  
This information should not be used in place of the actual  
regulations.*



# *Overview*

- **Background**
- **Review**
- **Mandatory Requirements**
- **Optional Requirements**
- **Next Steps**
- **Authorization Process**
- **Rulemaking Process**



# *Acronyms*

- EPA – Environmental Protection Agency
- DTSC – Department of Toxic Substances Control
- RCRA – Resource Conservation and Recovery Act
- GIR – Generator Improvements Rule
- CFR – Code of Federal Regulations
- FR – Federal Register
- HSWA – Hazardous and Solid Waste Amendments of 1984
- HSC – Health and Safety Code
- CCR – California Code of Regulations
- LQG – Large Quantity Generator
- SQG – Small Quantity Generator
- VSQG – Very Small Quantity Generator
- CESQG – Conditionally Exempt Small Quantity Generator
- SAA – Satellite Accumulation Area
- CAA – Central Accumulation Area



## ***Background***

- GIR is an update to the regulations that apply to generators of hazardous waste
- RCRA was enacted in 1976 and amended in 1984 by the Hazardous and Solid Waste Amendments but hasn't changed since.
- These changes are over 30 years in the making.
- The new regulations were adopted by EPA and became effective federally on May 30, 2017
- EPA's primary objectives include: re-organization, providing clarity, strengthening environmental protection, and providing greater flexibility to generators
- Found in Code of Federal Regulations, Title 40, Part 262 (Also Part 260 (Definitions))



## ***Review: Steps for Compliance with Hazardous Waste Regulations***



1. Identify that you have a waste and determine if it is hazardous
2. Count how much hazardous waste you generated in the calendar month
3. Notify EPA or your authorized state agency of your hazardous waste activities
4. Manage the waste from the point of generation (Manifested)
5. Ship the waste offsite using a certified transporter (Manifested)
6. Dispose of the waste at a permitted TSD (Manifested)

# Review: Quantity Limits

## Small Quantity Generator (SQG)



$\leq 5$  Drums or  
 $\leq 275$  Gal. or  
 $\leq 2200$  lbs. or  
 $\leq 1000$  kg

## Large Quantity Generator (LQG)



$> 5$  Drums or  
 $> 275$  Gal. or  
 $> 2200$  lbs. or  
 $> 1000$  kg

**Key:** 55 Gal. Drum = 440 lbs. = 200 kg

For reference only



## *Objectives*

- 1. Section 100 Rulemaking:** Maintain state authorization to implement RCRA
- 2. Regular (APA) Rulemaking:** Identify requirements that will help California's hazardous waste generator program be more user friendly, clearer, address safety gaps, and be more flexible to generators while maintaining environmental protections. Public participation is strongly encouraged.





## ***Mandatory Requirements***

1. New re-notification requirements
2. Enhanced labeling and marking
3. Enhanced pre-transportation marking
4. Closure regulations
5. New requirements for incompatible wastes in SAAs
6. SQGs and LQGs must attempt to make contact with local authorities and document the attempt
7. LQGs must update their contingency plan to include a quick reference guide



# 1. Re-notification

## What has changed?

1. SQGs must re-notify every four years starting in 2021 using EPA Form 8700-12.  
*(Note: SQGs are already required to re-notify every two years in California, but now they must use EPA Form 8700-12)*
  - Online option available
2. LQGs must re-notify by March 1 of each even number year. LQGs may submit their re-notification as part of their biennial report required under 40 CFR 262.41.
  - LQGs must report all hazardous waste generated in a calendar year, even when it is managed the next year
  - LQGs must report for all months in the year, even if SQG for some of those months

## Where is it located?

- Federal: 40 CFR 262.18(d)(1) & (d)(2)
- State (Proposed): 22 CCR 66262.18(d)(1) & (d)(2)



## ***2. Enhanced Labeling and Marking***

### **What has changed?**

Requires generators to mark their tanks and containers with the following:

1. The words “Hazardous Waste”
2. Words identifying the composition and physical state of the wastes (*Existing California Requirement*)
3. An indication of the hazards of the contents of the tank or container

### **Where is it located?**

- Federal: 40 CFR 262.15(a)(5), 262.16(b)(5) & (b)(6), 262.17(a)(4) & (a)(5)
- State (Proposed): 22 CCR 66262.15(a)(5), 66262.16(b)(6), 66262.17(a)(5)



## ***2. Enhanced Labeling and Marking (cont.)***

### **Note:**

- The only difference between marking and labeling containers in SAAs or CAAs is:
  - Containers in SAAs must be marked or labeled with the date the maximum volumes (or mass) are exceeded; and
  - Containers in CAAs must be marked or labeled with the date the hazardous waste first began accumulating
- Both of these dating requirements are existing requirements that remain unaffected by this rule



### ***3. Enhanced Pre-Transportation Marking***

#### **What has changed?**

Requires generators to mark their containers with the applicable EPA hazardous waste number(s) prior to shipping their containers off site to a RCRA-permitted TSDF

- Simplifies the consolidation process at the TSDFs
- Allows TSDFs to operate more efficiently
- Codification of an existing good management practice

#### **Where is it located?**

- Federal: 40 CFR 262.32(b) and (c)
- State (Proposed): 22 CCR 66262.32(b)



## 4. LQG Closure Regulations

### What has changed?

- Revisions to the closure regulations for LQGs
  1. Consolidating the closure regulations into one section
  2. These regulations consist of two components:
    - i. Closure of a waste accumulation unit, such as a tank, container, or containment building; and
    - ii. Closure of a generator's facility
  3. LQGs must notify EPA or the authorized state using the Site ID form (EPA Form 8700–12) at least 30 days prior to closing their facility, and
  4. LQGs must notify EPA or the authorized state within 90 days after closing the facility
- The regulations identify clean close requirements and expand the applicability of closure regulations to containers in CAAs.

### Where is it located?

- Federal: 40 CFR 262.17(a)(8)
- State (Proposed): 22 CCR 66262.17(a)(8)

For reference only



## ***5. Incompatible Wastes in SAAs***

### **What has changed?**

Three special requirements for incompatible wastes in SAAs:

1. Incompatibles must not be placed in the same container;
2. Hazardous waste must not be placed in an unwashed container that previously held an incompatible; and
3. A container holding an incompatible must be separated from the other material by means of a dike, berm, wall, or other device

### **Where is it located?**

- Federal: 40 CFR 262.15(a)(3)
- State (Proposed): 22 CCR 66262.15(a)(3)



## ***6. Attempting to Make Contact with Local Authorities***

### **What has changed?**

- SQGs and LQGs are now required to document their attempt to make arrangements with local authorities

### **Where is it located?**

- Federal: 40 CFR 262.16(b)(8)(vi) & 262.256
- State (Proposed): 22 CCR 66262.256





## ***7. Quick Reference Guide (QRG)***

### **What has changed?**

- Requires new LQGs to develop a quick reference guide that summarizes their contingency plan for emergency responders
- Requires existing LQGs to develop a quick reference guide when revising their contingency plan

### **Where is it located?**

- Federal: 40 CFR 262.262(b)
- State (Proposed): 22 CCR 66262.262(b)



## ***Elements of the Quick Reference Guide***

1. Types/names of hazardous waste and associated hazards
2. Estimated maximum amounts of hazardous wastes
3. Identification of hazardous wastes requiring unique/special treatment
4. Map showing where hazardous wastes are generated, accumulated and treated at the facility
5. Map of facility and surroundings to identify routes of access and evacuation
6. Location of water supply
7. Identification of on-site notification systems
8. The name of the emergency coordinator(s) and 24/7 emergency telephone number(s)



## ***End of Mandatory Requirements***

- This marks the end of the requirements that are being adopted in the first rulemaking
- The rest of the slides will cover the requirements that may be adopted in the next rulemaking



## *Optional Requirements*

Green = Non-Substantive

1. Allowing VSQGs to send their hazardous waste to LQGs
2. Waiver to the 50 ft. rule for accumulating ignitable and/or reactive wastes at LQG facilities
3. Allowing generators to maintain their generator category during episodic generation
4. Changing the term CESQG to VSQG
5. Adding new language for hazardous waste determination criteria
6. Distinguishing between independent requirements and conditions for exemption
7. Revisions to SAA requirements for SQGs and LQGs (9 changes in total)
8. Re-organization of the regulations to make them more user friendly
9. Adding new definitions for CAA, VSQG, LQG, Non-Acute Hazardous Waste and modifying the definitions of SQG and Acute Hazardous Waste
10. Mixing non-hazardous waste with hazardous waste
11. Requirement prohibiting generators from disposing of hazardous liquid in landfills



# ***1. Allowing VSQGs to Voluntarily Send Hazardous Waste to LQGs***

## **What has changed?**

This provision provides flexibility to VSQGs and LQGs by allowing VSQGs to send their hazardous waste to LQGs and allows LQGs to accept and consolidate hazardous waste generated offsite if certain conditions are met.

## **Where is it located?**

- Federal: 40 CFR 262.14 (a)(5)(viii) and 262.17
- State (Proposed): None



## ***2. Allowing LQG's to apply for a waiver from the 50 ft. rule***

### **What has changed?**

This provision allows LQGs to apply for a site-specific waiver from the 50 ft. rule for ignitable and reactive hazardous wastes.

### **Where is it located?**

- Federal: 40 CFR 262.17(a)(1)(vi)
- State (Proposed): None



### ***3. Episodic Generation***

#### **What has changed?**

- This provision allows VSQGs and SQGs to maintain their existing generator category if they have an episodic event.
- The conditions include only one event per year,(the provision also defines planned and unplanned events), the completion and maintaining of records, and the tracking and accounting for hazardous wastes generated during the event.

#### **Where is it located?**

- Federal: 40 CFR 262, subpart L
- State (Proposed): None



## ***4. Changing the term CESQG to VSQG***

### **What has changed?**

The federal regulations are no longer using the term CESQG. While this generator category never existed in California, the term CESQG is referenced various times throughout our regulations and statutes.

### **Where is it located?**

- Federal: Varies
- State (Proposed): Varies





## ***5. New language for hazardous waste determination criteria***

### **What has changed?**

Six revisions in total regarding hazardous waste determinations. Requirements include clarifying that waste determinations must be accurate to ensure proper cradle to grave management, making determinations at the point of generation, etc.

### **Where is it located?**

- Federal: 40 CFR 262.11
- State (Proposed): None



## ***6. Distinguishing between independent requirements and conditions for exemption***

### **What has changed?**

Added this section to clarify the difference between an independent requirement that applies to all generators of hazardous waste and a condition for exemption that must be met if a generator wishes to avoid becoming a permitted facility.

### **Where is it located?**

- Federal: 40 CFR 262.1
- State (Proposed): None



## ***7. Satellite Accumulation Area Revisions***

### **What has changed?**

This provision makes 9 total regulatory changes to the SAA requirements such as exceptions for keeping containers closed.

### **Where is it located?**

- Federal: 40 CFR 262.15
- State (Proposed): 22 CCR 66262.15, HSC Section 25123.3



## ***7. Satellite Accumulation Area Revisions (Cont.)***

The 9 revisions to SAAs are listed below:

1. New special requirements for incompatible wastes for SQGs and LQGs.
2. Flexibility regarding keeping containers closed at all times during accumulation.
3. Clarifying the language of the three day rule.
4. Flexibility to allow generators to accumulate liquid or solid hazardous waste.
5. Clarifying the regulations for situations when the maximum volume (or weight) is exceeded in a SAA.
6. Containers used in SAAs will be subject to the strengthened marking and labeling.
7. The applicability of preparedness, prevention and emergency procedures.
8. Rescinding a Memo Regarding Accumulating Reactive Hazardous Waste Away From the Point of Generation
9. Examples of the Meaning of “Under the Control of the Operator”



## ***8. Re-organizational***

- **Re-organized the regulations as follows:**
  - Reserved section 66262.34 Accumulation Time
  - Created New Section 66262.15, 66262.16, 66262.17, and 66262.18 for SAA, SQGs, LQG, and ID Numbers respectively
  - Also moved Preparedness, Prevention, and Emergency Planning Procedures from Articles 3 and 4 of Ch. 15 to a new Article 9 in Ch. 12 to avoid referring back and forth between chapters



## ***9. Adding Definitions***

- **Added the following definitions:** CAA, VSQG, LQG, Non-Acute Hazardous Waste
- **Modified the definitions** of SQG and Acute Hazardous Waste

### **Where is it located?**

- Federal: 40 CFR Section 260.10 (Definitions)
- State (Proposed): 22 CCR Section 66260.10 (Definitions)



## ***10. Mixing Non-Hazardous Waste with Hazardous Waste***

### **What has changed?**

- Moved the requirements for mixing hazardous waste to new section 262.13, *Generator category determination*
  - Makes generators aware of the regulations that apply to them when determining their generator category

### **Where is it located?**

- Federal: 40 CFR 262.13
- State (Proposed): None



## ***11. Disposing of Hazardous Liquid in Landfills***

### **What has changed?**

EPA is including the existing requirement that prevents hazardous liquids from being disposed of in landfills directly in the generator regulations to remind generators that these requirements don't just apply to hazardous waste haulers or landfill operators, but also to hazardous waste generators.

### **Where is it located?**

- Federal: 40 CFR 262.14(b), 262.35
- State (Proposed): None





## ***End of Optional Requirements***

This is the end of the requirements that may be adopted in the next rulemaking



## ***End of GIR Requirements***

The remaining slides cover the authorization process and rulemaking process in further detail



## ***Next Steps***

1. A Section 100 Rulemaking for the mandatory and non-substantive requirements
  - Objective: Maintain state authorization to implement RCRA
  
2. A Regular (APA) Rulemaking for the optional requirements
  - Objective: Identify requirements that will help California's hazardous waste generator program be more user friendly, clearer, address safety gaps, and be more flexible to generators while maintaining environmental protections



## ***Authorization Overview***

- RCRA subtitle C aka the federal hazardous waste management program
- May be implemented either directly by US EPA or by the state itself (if it is an authorized state)
- State Authorization is achieved by submitting an authorization package to the regional EPA office
- Once approved by the region, that state is authorized to implement RCRA (or portions of it)
- California is an authorized state



## ***Statutory Authority***

- There are two statutes that grant DTSC the authority to implement a hazardous waste management program
  1. RCRA (1976) (aka non-HSWA); and
  2. Its amending statute, the Hazardous and Solid Waste Amendments of 1984 (HSWA)
- Any regulations adopted under RCRA do not take effect until they are adopted in the authorized state
- Any regulations adopted under HSWA take effect immediately



## ***Statutory Authority***

- The generator improvements rule was federally adopted under RCRA
- **These regulations don't take effect in California until DTSC adopts them, or parts thereof**



## ***What rules apply in California?***

- California Code of Regulations, Title 22, Division 4.5, Chapter 12  
*Standards Applicable to Generators of Hazardous Waste*
- What about rules in Chapter 12 that referenced rules in 40 CFR that have changed?

**The rules in Chapter 12 still apply.**



## ***Maintaining Authorization***

- In order to maintain state authorization, the state program must be:
  1. At least as stringent as; or
  2. More stringent than the federal program
- Any requirement under the GIR is compared to existing state requirements and categorized as either:
  1. More stringent;
  2. Less stringent; or
  3. Neither more nor less stringent
- Stringency is not the only factor. A federal requirement may also become broader in scope, which would require authorized states to adopt the requirement to maintain authorization.





## ***The Rulemaking Process***

- There are two different types of rulemakings being used to adopt regulations under the GIR
  1. Section 100 Rulemaking (Expedited Process)
  2. Regular Rulemaking (Administrative Procedure Act)



## ***Section 100 Rulemaking***

- California Code of Regulations, Title 1, Section 100
- Allows for changes without regulatory effect (i.e. non-substantial changes) including:
  1. Renumbering, relocating
  2. Repeals
  3. Final court judgment invalidating a regulation
  4. Syntax/cross-referencing/grammar/punctuation
  5. Authority and/or reference citations
  6. Conforming to mandated statutory language (i.e. any change to California regulations to ensure conformity to the Resource Conservation and Recovery Act



## ***Regular Rulemaking Process***

- The vast majority of regulations adopted pursuant to the Administrative Procedure Act (APA) are submitted to OAL as “regular” rulemakings.
- Unless a proposed rulemaking action is submitted to OAL as an “emergency” rulemaking or is exempted from the APA, the regular rulemaking process must be complied with when an agency intends to make an emergency regulation permanent

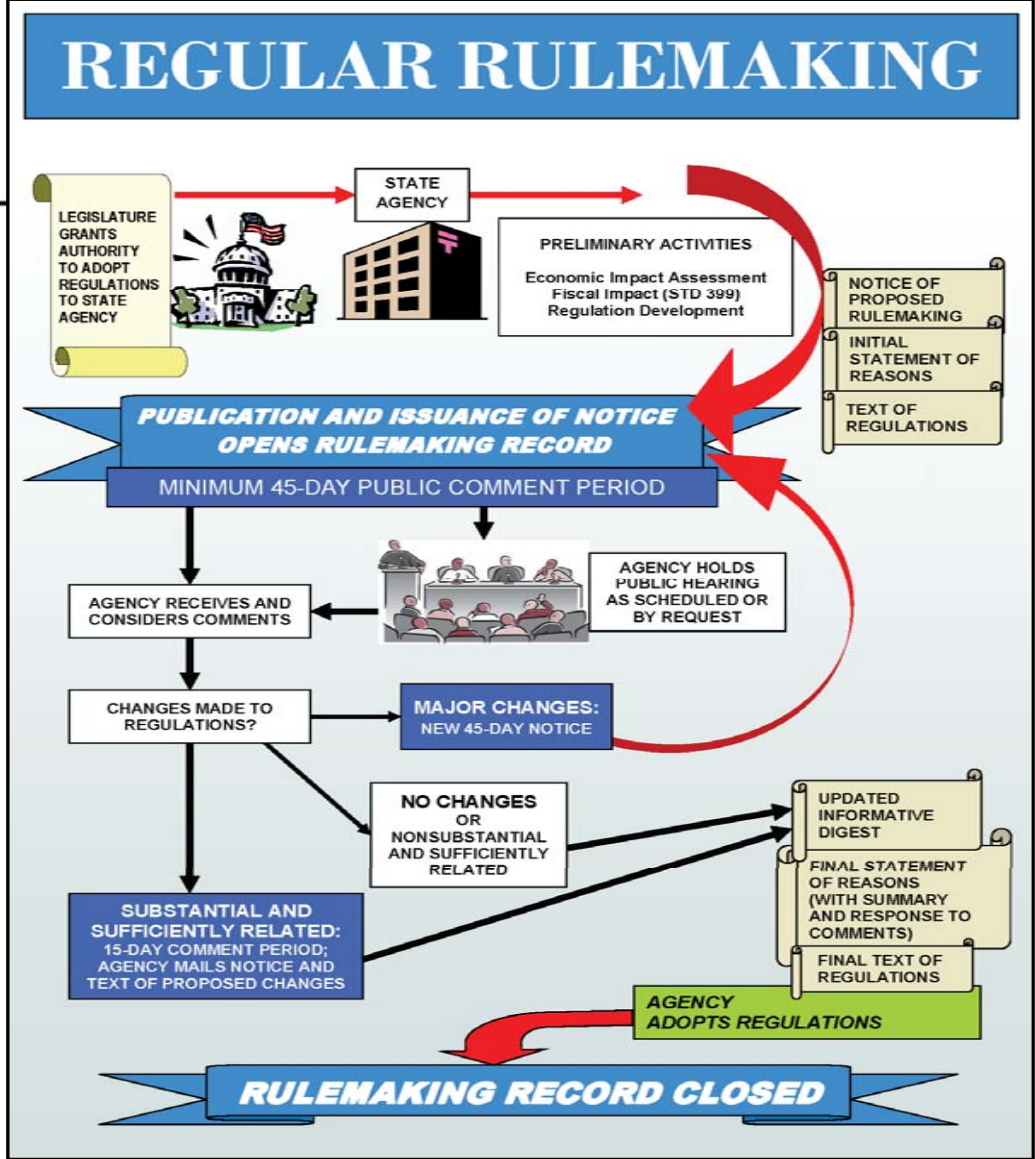


## ***Regular Rulemaking Process (cont.)***

- The regular rulemaking process includes comprehensive public notice and comment requirements.
- It also requires that documents and information on which the rulemaking action is based are available for review and inspection.
- This comprehensive process is intended to further the goal of public participation in the rulemaking process and to create an adequate rulemaking record for review by OAL and the courts.

# Regular Rulemaking Flowchart

1. Legislature Grants Authority
2. Preliminary Activities
3. Notice of Proposed Rulemaking (NOPR)
4. Initial Statement of Reasons (ISOR)
5. Text of Regulations
6. Publication
7. Minimum 45-day Commenting Period
8. Incorporate Feedback (*Iterative Process*)
9. Rulemaking Record Closed





## ***To Summarize***

- The GIR does not take effect in California until DTSC adopts it
- DTSC MUST adopt the provisions that are more stringent than existing state requirements in order to maintain state authorization to implement RCRA
- DTSC MAY adopt the optional provisions that are either less stringent or neither more nor less stringent than existing state requirements, but is not required to and requires full rulemaking



## ***Example***

- US EPA has identified the following requirement as more stringent:
  - SQGs are required to re-notify US EPA
  - Section 262.18(d) *Re-notification*. (1) A small quantity generator must re-notify EPA starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification must be submitted by September 1<sup>st</sup> of each year in which re-notifications are required.



## ***Example (cont.)***

- Equivalent requirement in California Health and Safety Code, Section 25205.16(b): “The department shall establish an identification number certification system to biennially verify the accuracy of information related to generators...Each entity issued an identification number shall provide or verify the information specified in paragraphs (1) to (9), inclusive when requested by DTSC...”
- Is the RCRA requirement more stringent, less stringent, or equivalent to California’s requirement?





## ***Recap***

- **Background**
- **Review**
- **Mandatory Requirements**
- **Optional Requirements**
- **Next Steps**
- **Authorization Process**
- **Rulemaking Process**



## ***Useful Links***

[DTSC GIR Web Page](#)

[EPA GIR Web Page](#)

[DTSC Website](#)

Subscribe to the [Cal. Code Regs. Title 22 Updates](#) E-List



## *Questions?*

Phone: (916) 324-1814

Project Email: [gir@dtsc.ca.gov](mailto:gir@dtsc.ca.gov)



***Thank You***